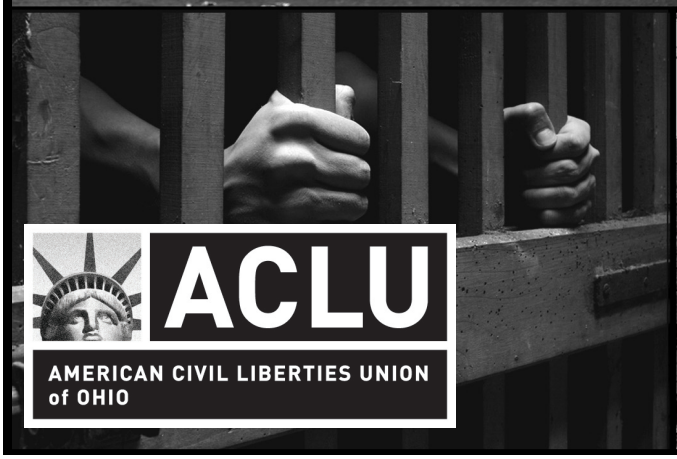
Looking Forward:

A Comprehensive Plan for Criminal Justice Reform in Ohio

March 2016



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OHIO JUSTICE & POLICY CENTER
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A Comprehensive Plan for Criminal Justice Reform in Ohio

American Civil Liberties Union of Ohio
Ohio Justice & Policy Center

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Introduction

Ohio has a mass incarceration crisis. There are currently 50,600 Ohioans in prisons designed to hold 38,600; that's at least 12,000 too many of our neighbors and fellow citizens in cages. And beyond these inhumane numbers, there is a fundamental misuse of criminal-justice tools to attack social and health problems. We have responded to poverty, drug and alcohol addiction, mental illness, or an overall lack of opportunities with punishment.

Instead of treating people with mental illness, we criminalize them and block access to the care they so desperately need. We allow low-income people to be victimized by steep fines and costs, with many languishing in local jails because they cannot afford to pay a court fine or make bond. People who have a small amount of drugs are not given treatment for their addiction, but instead offered prison sentences and a felony conviction. Those who try to re-enter society have the door slammed shut by mounting collateral sanctions that prevent them from getting a job, housing, education, reliable transportation, and more.

The result is a system that is costing our state in every sense of the word. Ohio has the sixth largest prison population in the nation. In the last decade, the prison population has increased 12 percent despite the fact that the violent crime rate has reached a 30-year low. In 2014, taxpayers spent over $1.7 billion to operate the state prison system alone. Every dollar spent on prisons is a dollar not spent on crime-survivor services, schools, addiction treatment, mental healthcare and other services that enrich our communities and that keep people out of the criminal justice system in the first place.

Nowhere are the negative effects of mass incarceration felt more than in communities of color. African Americans account for nearly half the state's prison population but only a little more than a tenth of the total state population. Mass incarceration has decimated neighborhoods, leaving many communities of color with countless people unable to find employment and cycling in and out of the justice system.

State leaders have begun to recognize that mass incarceration is simply not working and must be dismantled. In 2011, a bi-partisan group of legislators, along with advocates and activists, passed House Bill 86 (HB 86). This legislation was part of the federal Justice Reinvestment Initiative that sought to reform state criminal justice systems and provide resources for strategies that depopulate prisons and jails. While HB 86 promised modest reforms, it was never fully implemented or funded, and despite a short plateau, Ohio's prison population is growing.

The time for modest, incremental steps is over. We must challenge ourselves to imagine a fundamentally different justice system that is truly just, and not merely focused on punishment. We must usher in an era of being smart on crime, not just tough on crime, where accountability does not mean punishment for punishment's sake. We can create forms of accountability that restore the law-breaker to being a productive member of society while also offering more robust healing and restoration to crime victims.

Currently, the Ohio General Assembly has created a Criminal Justice Recodification Committee that is tasked with rewriting our criminal laws. Once again, state leaders have invited members of that committee to use this opportunity to change our justice system. However, the problem does not begin or end simply with the contents of Ohio's criminal code, nor does the solution reside solely with the Committee. Their work represents a meaningful opportunity to bring about substantive reform—that opportunity must not be squandered on narrow, technical edits to statutory language. Now is the chance for the legislature to precisely identify and fundamentally change the policies that drive excessive incarceration. It is with this approach that we can perhaps finally begin looking forward to a new justice system that makes our communities stronger and lifts up the people of Ohio, rather than keeping them down.

Executive Summary

Simplification of the Ohio criminal code is no small task and the Criminal Justice Recodification Committee has an important opportunity to propose changes to reduce our overcrowded jails and prisons. Our report offers recommendations that are a blueprint for long-term criminal justice reform in Ohio. We advocate that all of the following proposed changes apply retroactively. The following synopsis highlights six broad categories that are ripe for reform:

1. **Limit Harsh, Automatic Punishments:** "One-size fits all" does not work for our criminal justice system. Instead, criminal laws must address society's specific needs and strategies that emphasize rehabilitation should be the priority rather than resorting to incarceration as the fallback position. Each case is different, and our laws need to reflect these differences. To break the cycle and begin to rebuild our broken communities, Ohio must:
    - Eliminate mandatory minimum sentences, which remove judicial discretion and individualized review;
    - Reclassify low level felonies to reduce the collateral consequences associated with certain convictions;
    - Plug the Statehouse-to-Prison Pipeline, which sends too many people to jails and prisons for too long; and
    - Invest in meaningful alternatives to incarceration to relieve our overextended prison system.

2. **Prioritize Rehabilitation:** Ohio's mass incarceration system can no longer function as the state's largest mental health provider. We must determine the root cause of problems that result in criminal charges and utilize rehabilitative programs rather than incarceration. Investing in rehabilitation can decrease the prison population and preserve public safety. To achieve these goals, we recommend:
    - Increasing mental health resources so that more people are treated in their communities and not in our criminal justice system; and
    - Increasing and expanding the use of earned credit so that people have an incentive to fully participate in programs and earn early release back into their communities.

3. **Release Innocent People from Jail:** Too many people languish in our jails for low level offenses rather than being cited and released or because they cannot afford cash bail. These practices are expensive, unjust, and have a significant disparate racial impact. To reduce the burden on our overcrowded jails and create a more just system, Ohio must:
    - Use tickets over arrests for those accused of lower level and nonviolent misdemeanor offenses; and
    - Reform the bond system to decrease reliance on cash bail when viable alternatives exist and to ensure that judicial discretion does not lead to inconsistency between jurisdictions and create racial disparity.

4. **Decriminalize Poverty:** Steep financial sanctions and court fees, criminalizing innocuous behavior, and punishing debt with more debt contributes to the cycle of debt and incarceration and criminalizes being poor. Ohio needs to end these practices and decriminalize poverty by:

- Dismantling debtors' prisons and pay-to-stay fees, which ruin lives and cost communities;
- Not locking people up for failure to pay child support due to a genuine inability to pay; and
- Reducing financial sanctions and mandatory fines, and eliminating administrative fees for payment plans.

5. **Limit Collateral Consequences:** In order to prioritize rehabilitation and decrease our prison population, Ohio needs to reduce burdensome collateral consequences. These lasting penalties create barriers to reentry and keep people in poverty once they are released into the community. To allow people to fully exit the criminal justice system and reintegrate into their communities, Ohio must:

    - Limit post-release conditions that hinder people from fully reentering their communities, including those which have no rational relationship to the crime, or create permanent bars to employment or housing; and
    - Reform record sealing laws to allow people to achieve self-sufficiency through employment.

6. **Reform Community Control:** Community control can often be an effective alternative to incarceration. It allows people to remain in their communities while also relieving our overextended jails and prisons. Ohio should prioritize using forms of community control to reduce jail terms, as well as granting parole to those who have shown genuine signs of rehabilitation. To achieve these goals, Ohio needs to address two problem areas:

    - Implement a unified, statewide community control system, and reduce the use of incarceration for community control violations; and
    - Create more transparency in setting parole, stop relying on the "seriousness of the offense" as a parole factor, stabilize or increase parole release rates, and mandate presumptive release.

I. Limit Harsh, Automatic Punishments

Our criminal justice system will never be effective unless we prioritize strategies that emphasize rehabilitation rather than incarceration alone. Mandating harsh, automatic criminal penalties obstructs judges' ability to individualize sentences and punishments. Every case is different, and our laws need to accommodate these differences. Too often, there is no adequate alternative to incarceration, leaving jails and prisons as the only places to care for individuals who are better suited for more rehabilitative settings. To address these concerns, the Ohio legislature should (1) eliminate mandatory minimum sentences; (2) reclassify low-level felonies; (3) plug the statehouse-to-prison pipeline; and (4) invest in meaningful alternatives to incarceration.

Recommendation 1 – Eliminate Mandatory Minimum Sentences

When mandatory minimums were first introduced, they were touted as a way to reduce gross racial disparities in sentencing sustained by broad judicial discretion. Decades later, one only has to look at the racial makeup of Ohio's prisons to see that mandatory minimums have not solved this problem. Black people are incarcerated at 6 times the rate of white people in Ohio. 45 percent of the state's prison population is African American, while African Americans only account for 12 percent of the state's total population.[1] Yet, African Americans account for over 25% of all arrests in the state.[2]

It is clear that mandatory minimums have not solved racial injustice within our mass incarceration system, and there are serious questions as to whether they have actually made it worse. Very few studies exist in this area; however, the current studies indicate that after mandatory sentencing was introduced racial disparities in sentencing increased.[3]

Chapter 29 of the Ohio Revised Code is brimming with mandatory minimums with the bulk occurring in § 2925: drug offenses.[4] In total, there are 105 mandatory minimum sentences for people charged with levels 3-5 felony offenses.[5] **Out of the 105 mandatory minimums, 77 percent relate to drug crimes.**[6] It is no secret that the federal War on Drugs has been used to control and devastate communities of color and has largely failed at its stated goal of reducing drug use and making communities safer. Unfortunately, Ohio is no different. 1 in 4 of all people newly admitted to prison in Ohio are there for a drug offense, and 1 in 8 are there specifically for drug possession.[7] These individuals may be better served by rehabilitation and social interventions than incarceration, yet Ohio's outdated and ineffective mandatory minimums require that these individuals go to prison. Given the racial disparities in our prison population and the historical knowledge around biased drug law enforcement, it is reasonable to assume that this also drives the incarceration of African Americans in Ohio. For example, black Ohioans are 4.1 times more likely to be arrested for marijuana possession than whites, even though they use marijuana at roughly the same rates.[8]

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Mandatory minimums were intended to reduce discretion in sentencing to ensure that punishments were impartial. In practice, however, mandatory minimums have merely shifted the discretion from judges to prosecutors, who now have far greater powers to decide who goes to prison and for how long. Prosecutors control decisions with what crime a person is charged, plea agreements, and sentencing recommendations. Judges are intended to be an independent arbiter and will sentence an individual once she is found guilty, while taking into consideration multiple factors including the person's criminal history, the nature of her offense, and other pertinent information. Shifting discretion results in prosecutors using mandatory minimums as a powerful stick to threaten individuals to plead guilty to

crimes they would otherwise not plead to in order to avoid sentencing enhancements.[9] If a prosecutor decides to charge a defendant with a crime that includes a mandatory minimum, and if the defendant is found guilty, the judge has few options beyond incarceration and generally must sentence the person to prison.

Rather than impose suggested guidelines, these mandatory sentences tie judges' hands completely. While the legislature can make laws to address social ills, our judiciary is responsible for imposing punishments for breaking these laws and also for seeking ways to rehabilitate people. Mandatory minimums tie the hands of judges but also inappropriately place discretion into the hands of prosecutors.

While first and second degree felony offenses are by nature more serious, drug crimes still account for a significant portion of the mandatory minimums—30 percent of the 20 level 1-2 felony offense mandatory minimums.[10]

The Recodification Committee should eliminate mandatory minimums for all levels of offenses, particularly for drug crimes. Mandatory minimums take away judges' ability to individualize sentencing based on specific circumstances. They also unjustifiably bar considering extenuating circumstances that may call for a shorter sentence, or placing the person into rehabilitation instead of incarceration, which may have a greater benefit for both the convicted person and society as a whole.

For even the most heinous offenses, there are wide variations in behavior and circumstance. By giving judges more latitude to consider these variations and reduce sentences, we can prevent over-punishing without compromising the seriousness of the crime.

Recommendation 2 – Reclassify Low Level Felonies

Designating a crime as a felony versus a misdemeanor has significant consequences. A felony, *as opposed to a misdemeanor,* can affect everything from the ability to vote, to own a firearm, to obtain certain employment, or to serve on a jury. By reclassifying low level felony offenses to misdemeanors, we reduce collateral consequences associated with felony convictions. Lower level felonies generally include nonviolent offenses that do not necessarily have any bearing on public safety. Examples include forgery, theft, receiving stolen property, or failure to pay child support. While these are certainly still matters of public concern, saddling a person with a felony conviction over not paying child support will only grow our mass incarceration system.

Incarcerating a person for a fifth degree felony in state prison is rarely effective—largely because they spend relatively little time in prison, usually a year or less. Given the tremendous strain on our prison system's resources, this often means that **these individuals receive little to no rehabilitative programming because they are simply not in prison long enough.**

We favor reclassifying all fifth degree felonies to first degree misdemeanors and funneling those individuals into local rehabilitative and education programs. House Bill 86 (HB 86), the result of Ohio's Justice Reinvestment Act Initiative, opened the door for this reform to happen. However, many of the alternatives to incarceration made possible by HB 86 remain unfunded and have not been implemented.

In 2015, fifth degree felonies constituted 25 percent of all new state prison admissions.[11] Ohio would greatly benefit from fully funding HB 86's alternatives to incarceration by reducing the prison population. Reducing fifth degree felonies to misdemeanors will effectively reduce prison overpopulation and will reduce collateral consequences that stem from felony convictions and drive prison overpopulation.

Recommendation 3 – Plug the Statehouse-to-Prison Pipeline

By June 2015, 1 in 8 bills in the Ohio House enhanced, created or expanded criminal penalties, and 1 in 11 bills in the Senate did so as well.[12] Legislators may be well-intentioned, but the old "crime and punishment" mentality has gotten our state to where it is today. The ACLU of Ohio's 2015 report, "Ohio's Statehouse-to-Prison Pipeline," illustrates the connection between passing laws with minor increases in criminal sanctions and prison overcrowding. Taken out of context, these increases may seem inconsequential. But in the aggregate, these laws collectively create costly burdens on our criminal justice system.

One area that needs significant reform is enhanced penalties. Often, laws will increase the penalty for a crime depending on the circumstances surrounding it. For example, the same crime might have an increased penalty depending on whether the defendant carried a weapon, or whether the victim was a member of a certain profession or demographic. Enhanced penalties should always be justified by demonstrating that there is a heightened (1) societal need and/or (2) deterrent effect. Enhancements that are not justified by one or both of these purposes only serve to increase our prison population without providing any clear benefit to our community.

It is important to remember that the existing range of sentences for crimes are already quite punitive. These ranges are created to allow judges to consider aspects like the harm to or vulnerability of the victim, the full nature of the crime, and the criminal history of the defendant. Any further punishment should be justified by demonstrating that the range of sentencing options available to the judge are not adequate to protect public safety.

Not all enhancements are created equal; many are arbitrary or redundant.

Arbitrary and redundant sentencing enhancements do little to nothing to ensure the safety of our communities, and instead, add to our bloated prison system. Because our prisons are functioning at 130 percent capacity, every increase in criminal penalties is a step in the wrong direction. Until we eliminate the statehouse-to-prison pipeline, any scale-backs in sentencing will be counteracted by increased penalties.

Recommendation 4 – Invest in Meaningful Alternatives to Incarceration

Instead of continuing to send more people to an already overburdened prison system, we should seek to solve the problem at its source. Two simple ways to move forward are to (1) give additional chances to people accused of offenses that are non-violent or do not pose a significant public safety risk, and (2) ensure that there are adequate resources to treat individuals in the community, rather than in prison or jail.

Jail time is but one of many available sentencing mechanisms to ensure public safety and deter law-breaking. When a low-level offense has occurred, we need to look for alternatives to short jail sentences that needlessly overpopulate jails and clog up the criminal justice system, such as community service and diversion programs. These programs benefit the government by reducing jail populations and thereby saving money. They also benefit defendants by giving them the opportunity to maintain employment and housing while they receive sanctions, which can lead to more adequate rehabilitation without defendants incurring collateral consequences.

HB 86 allowed leniency for people convicted of first-time drug offenses, the rationale being that these individuals should not be in prison. Unfortunately, these programs were not fully implemented or funded by the state of Ohio. As a result, there are still numerous people in our prison system who would be better served in rehabilitative environments, and more than half of the people in Ohio prisons are

incarcerated for the first time. We support the initiative HB 86 was intended to create and propose the expansion of this principle to apply to all people convicted of first-time, non-violent offenses.

II. Prioritize Rehabilitation

A doctor treating a patient with an allergic reaction does not simply give the patient Benadryl and consider the analysis over. A good doctor would investigate the reason for the allergy in order to prevent future reactions. Much the same, a punishment that addresses a bad act without addressing its underlying cause will not be effective in preventing future bad acts. Whether it's diminished mental health, economic hardship, or addiction, the root of the problem must be addressed. Rehabilitation should be a higher priority in our criminal justice system.

For example, perpetual theft as a result of mental illness is not going to be stopped by solitary confinement. Just like different underlying medical conditions can trigger the same result, different behaviors and circumstances can trigger the same criminal behavior. We propose the following recommendations to increase access to mental health resources and expand opportunities for people to earn credit against their prison sentences through rehabilitative programs.

Recommendation 1 – Increase Mental Health Resources

Our criminal justice system has become the largest mental healthcare provider in the state. Due to large-scale cuts in community mental health and addiction services, many individuals are unable to get the care they need. Once criminalized, they are funneled into an overcrowded and underfunded prison system that is ill-equipped to truly help individuals with mental illness and addiction issues.

A 2014 intake study highlighted that 33 percent of all state prisoners from the sample had a history of mental illness, while 90 percent reported a history of drug abuse and 70 percent had a history of alcohol abuse.[13]

Mental health resources are vital for the health of incarcerated people and their eventual successful re-entry into the community. We recommend that jail and prison resources focus on stabilizing the mental health of incarcerated people by ensuring adequate access to mental health treatment in the facilities, and it is crucial that medicine and other treatment continue once individuals are released back into the community.

We advocate for increasing the number of social workers available for those released; increasing supportive community services, including proper treatment facilities and housing; and giving more discretion to judges to investigate circumstances surrounding the commission of crimes and divert those with a mental illness to treatment instead of to jail or prison.

Recommendation 2 – Increase and Expand the Use of Earned Credit

Ohio Revised Code § 2967.193 provides a tool for certain prisoners to reduce their sentence by participating in programs approved by the Ohio Department of Rehabilitation and Corrections (ODRC). This is called "earned credit." ODRC is responsible for administering this program and is authorized to revoke previously earned credit or prohibit prisoners from acquiring credits for violating prison

rules. Additionally, there are complex guidelines for eligibility. While earned credit is a useful way to rehabilitate people and reduce prison populations, Ohio's earned credit structure suffers from several shortcomings.

i. Expand the Use of Earned Credit

HB 86 expanded the use of earned credit—a welcome reform to Ohio's criminal justice system—but the use of earned credit is still far too narrow. Many individuals are simply unable to earn credit for participating in rehabilitative programming because the statute disqualifies those convicted of certain offenses.

Further limiting the potential positive impact of earned credit, prisoners can only earn credit toward 8 percent of their total sentence length. Placing a cap on the amount of earned credit a person can obtain does not aid in maintaining security or ensuring public safety once the prisoner re-enters society. Instead, this limitation undermines a prisoner's ability to reform himself, potentially hindering successful re-entry into society. We advocate for expanding the eligibility for and use of earned credit,as well as removing the low cap on the amount of earned credit available.

ii. Require that Prisoners are Informed about Earned Credit

Ohio Revised Code § 2967.193 does not contain a notice requirement, meaning many prisoners may not know they are eligible to earn credit toward an early release. There have been a number of unsuccessful lawsuits related to sentences delivered without providing notice of earned credit eligibility.[14] Courts have consistently held that since the law does not include a required notice provision, they are not required to inform people of their eligibility. This is troubling, and may also lead to misguided hopes of an early release for those who do not qualify.[15] Either way, not providing notice about earned credit at sentencing deprives individuals of their ability to fully comprehend the true conditions of their punishment and length of incarceration. We strongly recommend that the statute be amended to include a notice provision that requires courts to inform defendants of their earned credit eligibility status.

iii. Eliminate Potential for Unequal Access to Program Participation

A major shortcoming of the current law regarding earned credit is the potential for unequal access. In fact, it is completely silent on the issue of accessibility.[16] Without some legal guarantee of access to these programs, arbitrary factors could ultimately determine a prisoner's ability to earn credit toward an early release. For example, prisoners in a private prison might have more limited opportunities to participate in credit-earning programs than prisoners at a state-owned prison. Similarly, if a prisoner is assigned to an overcrowded prison, she would likely have fewer opportunities for earned credit than a prisoner at a less crowded institution. This disparity would be the result of nothing more than an unfortunate prison assignment. Creating disparate opportunities for early release among individuals who are convicted of the same crime contradicts the tenet of consistent sentencing simply based on which prison they are placed or the resources available in a given prison. In addition to guaranteeing access to these programs, the law should require equal opportunity among all eligible prisoners to earn credit and this must be complemented by the legislature providing significant funding to ensure that substantial rehabilitative programming is available to all prisoners, regardless of their institution or the security level they are assigned.

III. Release Innocent People from Jail

One of our nation's foundational principles is the concept of innocent until proven guilty. The criminal justice system is supposed to protect individuals from unfair treatment by providing standards for admissible evidence, burdens of proof, and the unbiased administration of justice. These intentionally high standards are meant to protect individuals from unjustified deprivations of liberty prior to conviction of a crime and ensure a just result. But many people in our jails are there simply because they cannot afford bail. Locking low-income people away in jail with little hope of release before trial has become commonplace in Ohio, and it is time to reverse this trend. Systematically incarcerating individuals prior to conviction is unjust, impractical, and expensive.

Jail populations have grown steadily since the 1990's, putting a strain on county and local governments. Nationally, about 70 percent of people in jail have not been convicted of a crime; they are either awaiting trial or being processed after an arrest.[17] To reduce jail populations, we should target those who should not be in jail in the first place—people who are not granted pre-trial release and those arrested rather than ticketed for a crime.

Nationally, pretrial incarceration has become a topic of public interest, pushed into the spotlight after the introduction by Congress of the "No More Money Bail Act of 2016" which proposes to eliminate the use of cash bail.

Ohio is no exception to national trends. In Ohio, jails house individuals who are being processed or were sentenced to six months or less. Between 2005 and 2008, the vast majority of all individuals in Ohio jails were un-sentenced.[18] In 2008, Ohio's jails held over 20,000 people each day, and on average, exceeded recommended daily capacity.[19] On average, it costs more than $60 per day to house a single individual in a local jail—costing Ohio taxpayers at least $438 million per year to incarcerate these individuals.[20] This is an extreme financial burden on Ohio's cities and counties.

On average, it costs more than $60 per day to house a single individual in a local jail—costing Ohio taxpayers at least $438 million per year to incarcerate these individuals.

Not only does this take a severe toll on taxpayers, it is also devastating for the people incarcerated and their families. Even just a few days of incarceration means that a person will likely lose employment, sending families deeper into poverty. If a person is held before trial for weeks or even months, that is significant time that families must also endure without the incarcerated person contributing to their household.

Needless incarceration of low-risk individuals is a strain on our economy and results in an overflowing jail population with untenable conditions. We should aim to keep people out of jail in general, especially while they await trial. This requires (1) favoring the use of citations rather than arrests for low-level offenses, and (2) reforming the bond system by using fair standards for setting bail, reducing the use of cash bail, and lowering the cost of bail overall. Additionally, we should support alternatives to the bond-jail structure.

Recommendation 1 – Use Tickets Over Arrests

Arrests contribute heavily to jail overpopulation and do little to serve the general public. Instead of arresting those accused of lower level and nonviolent misdemeanor offenses, we should increase the use of ticketing as a common sense way of relieving jail overpopulation.

Misdemeanor offenses such as possession of nearly any amounts of marijuana, hashish, or drug paraphernalia should be reclassified as minor misdemeanors. Very small amounts of these items are already classified as minor misdemeanors, but we believe that possession of nearly all amounts should be reclassified. Other examples of fourth degree misdemeanors that should be reclassified as minor misdemeanors include:

- Failure to disperse;
- Disrupting a lawful meeting;
- Various tax-related offenses; and,
- Minor traffic violations, such as wrongfully displaying POW or firefighter license plates.

Other offenses, such as those related to donating or selling contaminated blood, should be removed from the criminal code altogether because they do not reflect current science or best practices in public health. Generally, we believe nearly all misdemeanor offenses should be examined and when able, reclassified at least one degree lower, and if there is no good public interest in arresting an individual, they should be reclassified to minor misdemeanors that can be addressed by a simple ticket.

In addition to changing Ohio law to make more offenses ticket-able, local judges and leaders should work with prosecutors and law enforcement to implement practices that de-emphasize arrest for low-level misdemeanors. A significant amount of jail space is wasted processing unnecessary arrests. Where possible, law enforcement should use tickets for misdemeanor offenses rather than arrests.

Recommendation 2 – Reform the Bond System

The general rationale for setting bail to keep people in jail while they await trial is to (1) ensure that people appear for their court date and (2) prevent accused individuals from posing a danger to the community. But studies show that keeping people in jail as they await trial does not necessarily accomplish either objective, and it is certainly less effective than alternative methods of pretrial release.[21]

Accordingly, the American Bar Association's guidelines urge not only citations or summonses instead of arrest in the first instance, but pretrial release under "least restrictive conditions" in all cases, and release on one's own recognizance whenever possible.[22] **These guidelines urge that pretrial detention become the "exception," though in most jurisdictions—including Ohio—it is the rule.**[23] Several specific mechanisms are keeping innocent Ohioans in jails as they await trial.

i. Ensure Judicial Discretion Does Not Lead to Inconsistency

Ohio's criminal code grants significant judicial discretion in setting bail, which invites inconsistency and fails to account for important realities. For example, the imposition of bail, even at a seemingly low amount, can make it impossible for people with low income to post bond.[24] As a result, when judges do not consider income, cash bail can keep someone jailed for being poor, regardless of the level of danger they may pose to their community.[25] This is compounded by a lack of consistency between jurisdictions and judges, as different local court rules establish different bail guidelines.

Generally, Ohio's bail-setting guidelines correspond to offenses rather than to individualized assessments of a person's risk of flight or violence; this assumes someone's guilt for whatever they were initially accused of. As with most issues in the criminal justice system, people of color bear the brunt of these bad policies. According to the Pretrial Release Center, African American men receive a 35 percent higher bond than white men. Additionally, African Americans are twice as likely to be detained for a non-violent drug arrest as whites.[26]

Disparities are not just limited to race, as the average length of stay for people with mental health issues is 60 percent longer than for those without mental health issues.[27] Individuals who were jailed before trial were much more likely to receive prison and jail sentences—and longer sentences— than those given pretrial release.[27] Given the stark racial, economic, and mental health disparities, it is clear that our current bail system over-criminalizes the most vulnerable.

To reduce these disparities, Ohio law should uniformly consider the income level of arrestees when setting bail; establish a lower ceiling on bail in general; and use more accurate risk-assessment data when evaluating what an individual's bail should be.

ii. Decrease Reliance on Cash Bail

Ohio courts currently favor setting cash bail over allowing individuals out on their own recognizance or using non-cash pretrial release. Ohio law allows the use of secured bonds—requiring individuals to post some money percentage of their set bail in order to be released before trial. This exacerbates the inconsistencies and inequities discussed above. Viable alternatives exist to the secured bond system,[29] such as the use of unsecured bonds, or allowing individuals out completely on their own recognizance.[30] Unsecured bonds require some type of financial liability, e.g., a debt, but no actual cash posted, and personal recognizance allows individuals to await trial outside of jail with no financial obligation.

Still other forms of pretrial release include electronic monitoring or supervised release with restrictions on travel or other privileges. Ohio law allows these alternatives in certain circumstances. For example, a person can surrender their driver's license as an alternative to a cash bond for certain minor offenses.[31] The law should expand the use of non-financial alternatives and unsecured bonds, and discourage the use of secured bonds. However, electronic monitoring should not be used as another method to prey upon low-income people. Many electronic monitoring services charge steep fees for their use, making freedom from jail nearly impossible for many trapped in local jails.

In general, we should reduce bail amounts overall; reform bail-setting guidelines to be functions of the accused's actual risk and income level; and reduce the use of bonds in favor of pretrial release.

IV. Decriminalize Poverty

While it is *technically* not illegal to be poor, it often seems like it might as well be. With excessive financial sanctions, court fees, criminal penalties for debt, and laws that target impoverished communities, we have effectively created a criminal justice system that punishes poverty with jail-time, a criminal record, and more debt.

Recommendation 1 – Dismantle Debtors' Prisons

The ACLU of Ohio has taken a strong stance against the use of debtors' prison and pay-to-stay fees. Our reports, "In For a Penny: The Rise of America's New Debtors' Prisons," "The Outskirts of Hope: How Ohio's Debtor's Prisons are Ruining Lives and Costing Communities," "Adding it up: The Financial Realities of Ohio's Pay-to-Stay Jail Policies," and "In Jail & In Debt: Ohio's Pay-to-Stay Fees," all examine the cruel realities of excessive costs of the criminal justice system on defendants' lives and wallets.[32]

Recommendation 2 – Do Not Lock Up People for Failure to Pay Child Support

It is incredibly important for parents to pay child support to ensure the stability of families and that children will be provided the resources they need. However, for a vast number of Ohioans, unexpected problems may arise that cause them to fall behind on their payments. Unfortunately, the courts' current treatment of child support cases does not account for these realities; instead, it often results in parents falling even further behind.

Non-support cases unnecessarily clog up our jails and prisons. They begin with the excessive use of contempt sentences of 30, 60, and 90 days in juvenile and domestic relations court. Though relatively short, these jail terms are both humiliating and destructive to peoples' ability to find and keep jobs. The punitiveness gets far worse when defendants are charged with felony non-support. Frequently, a failure to pay child support results from a genuine inability to pay because of joblessness or incarceration. Yet judges routinely presume that all people who owe child support "could be flipping hamburgers *somewhere*"—with no evidence of the local availability of jobs, much less jobs that would allow the person to maintain even the most basic food and shelter. Criminalization and incarceration does nothing to improve the conditions for the children who are supposed to be benefitting from this system. Rather than cause these debts to pile up, Ohio law should allow debts to be retroactively reduced based on a showing of current employment status. Additionally, there should not be criminal or other non-financial sanctions for nonpayment, particularly driver's license suspension.

Recommendation 3 – Reduce Financial Sanctions

Ohio Revised Code §§2929.18 and 2929.28 outline financial sanctions for felonies and misdemeanors. Though these statutes involve different financial sanctions, they are structurally similar. Mandatory fines, however, are only imposed on felonies of the first, second and third degree. We urge judges to take individuals' income level into account when assessing fines and fees.

i. Reduce Felony Financial Sanctions

Courts are given broad discretion when fining individuals. Additionally, the court may require a person to pay a fee for the cost of community sanctions, confinement, or the cost of an immobilizing device such as an ankle monitor.[33] If the court orders the individual to pay a fine, the court will base the amount of that fine "on a standard percentage of the offender's daily income over a period of time determined by the court and based upon the seriousness of the offense."[34] Typically, the fine cannot exceed the "maximum conventional fine amount."[35]

Maximum Felony Fine Amount[36]	
Felony of the First Degree	$20,000
Felony of the Second Degree	$15,000
Felony of the Third Degree	$10,000
Felony of the Fourth Degree	$5,000
Felony of the Fifth Degree	$2,500

The court must impose a mandatory fine for first, second and third degree felonies that does not exceed the maximum fine amount, but is no less than half of the maximum fine amount.[37] This is problematic for low-income individuals, as even a fine half the amount of the maximum can still be steep. For example, the mandatory fine for a first degree felony is between $10,000 and $20,000. However, courts are supposed to determine if the person is indigent, and if so, the court should not impose the fine.[38] It is unclear whether indigence is actually taken into account on a regular basis.

In addition to mandatory fines and discretionary court-imposed fines, individuals are subject to a third set of fines that are specific to drug trafficking convictions under R.C. 2925.03.[39] Money collected from drug trafficking fines is transferred to "community addiction services."[40] The amount that the court may impose in drug trafficking fines depends on the person's financial interest in the property relating to the offense. If the court determines that the person had an interest in the property relating to the offense, then the court imposing this additional fine may not exceed the value of that property.[41] Notably, this allows the court to impose a fine that is greater than the maximum fine amount.

Ohio law allows a court to suspend a financial sanction when the individual has successfully met all other sanctions imposed.[42] We support and urge courts to use their ability to suspend financial sanctions for low income individuals.

ii. Reduce Misdemeanor Financial Sanctions

Unlike felonies, misdemeanor offenses do not have mandatory fines.[43] However, there are maximum fine amounts for misdemeanors.[44]

Maximum Misdemeanor Fine Amount	
Misdemeanors of the first degree	$1,000
Misdemeanors of the second degree	$700
Misdemeanors of the third degree	$500
Misdemeanors of the fourth degree	$200
Minor Misdemeanors	$50

Similar to felony financial sanctions, a court may charge a person for the cost of community sanctions, confinement or the cost of an immobilizing device, such as an ankle monitor, used on the person.[45] However, the fees may not exceed "the actual cost of the sanctions."[46]

Additionally, courts are not supposed to impose fines on indigent people convicted of a misdemeanor[47] Instead, courts should consider community service instead of fines.[48] Likewise, if someone fails to pay a fine, the court may replace the fine with community service.[49] Notably, this alternative is not available for indigent people convicted of a felony. Instead, the court simply will not impose the mandatory fine. Unfortunately, it is doubtful that judges are actually taking indigence into account when determining fines and opting not to impose them. For example, throughout the course of the ACLU of Ohio's debtors' prison investigation, we met numerous indigent individuals who had incurred steep fines and fees for low level offenses.[50]

We firmly advise courts to consider a person's ability to pay when assessing fines and fees and to use alternatives to monetary payment.

iii. Eliminate Administrative Fees for Payment Plans

Courts may allow people to pay fines and fees in installments.[51] If so, the court may charge a fee to cover the administrative costs.[52] But people who elect to pay off their fines and fees by using a payment plan are likely doing so because they cannot afford to pay in full. Charging an administrative fee to use this option disproportionately affects low income people who cannot afford large payments upfront. This creates a two-tiered system of justice where those who are poor end up paying more than their wealthy counterparts for the same offense.

V. Limit Collateral Consequences

Collateral consequences are lasting penalties attached to criminal convictions that exist beyond incarceration, including driver's license suspension and bars to certain employment and professional licensure. These added sanctions increase recidivism rates and keep people in poverty once they are released into the community. We support removing collateral sanctions, which are unrelated to safety or rehabilitation and present barriers to reentry. To further aid successful reentry, current record sealing laws should be strengthened to ensure that people can truly start fresh. These changes will help people fully exit the criminal justice system and reintegrate into their communities.

Recommendation 1 – Limit Post-release Conditions

Generally, the overarching goals of our criminal justice system are to (1) protect the public, (2) punish lawbreakers, (3) reform law-breaking behavior, and (4) deter future crime. Unfortunately, many collateral sanctions do not serve any of these functions, but instead, create lasting, damaging limitations on convicted persons after they've served their sentence.

Collateral consequences are extremely wide-ranging. The Ohio Justice and Policy Center developed the Civil Impacts of Criminal Convictions (CIVICC) database, which allows users to search for any offense in the criminal code and provides cross-references for all related collateral consequences.

Meanwhile, in 2012, Senate Bill 337 introduced a large collection of collateral sanctions reforms, some of which related to earlier recommendations from ODRC. Among other important reforms, S.B. 337: 1) created a certificate of qualification for employment (CQE) which removes many collateral sanctions for individuals with criminal records, without sealing their record; 2) expanded the record sealing statute so more individuals are eligible, including juveniles; and 3) limited prohibitions on professional licensure to a narrower class of criminal convictions.

S.B. 337 represents a starting place for reforming the criminal code to manage the negative impacts of collateral sanctions. We should build on these ideas and go further.

Recommendation 2 – Remove Unrelated Post-Release Conditions

But many consequences bear *no rational relationship* to the crime, much less a rehabilitative or community safety rationale, e.g., suspension of a driver's license for failure to pay child support. That particular crime-sanction relationship is actually counter-productive: it can keep someone from getting to work, even when that person is having in financial trouble.

We strongly recommend that all collateral consequences that bear no relationship to the underlying crime be eliminated.

Recommendation 3 – Reduce Employment and Housing Restrictions

The ACLU and OJPC have worked across Ohio for many years to dismantle the prejudice against those with criminal records by creating "ban the box" programming and educating the public about the harm of these prejudices. Barriers to employment are among the most counterproductive collateral sanctions that stem from criminal convictions. The inability to find employment prevents rehabilitation and decreases the likelihood of successful reentry into communities. We successfully promoted both a state administrative reform and House Bill 56 which removed the criminal-record checkbox from all

public-employment job applications in Ohio. *The legislature should* extend this same requirement to any vendor or contractor bidding for public contracts in Ohio.[53]

Recommendation 4 – Reform Record Sealing Laws

We support transparency, but until our employment and housing discrimination policies better serve vulnerable communities, we also support more expansive record sealing laws.

Ohio's record sealing statute is undermined by realities of the plea bargain system and should give judges more discretion to appropriately evaluate individual needs. The prejudice against people who have been convicted of a crime is harsh. This bias harms society as a whole by preventing those who are properly rehabilitated from gaining employment and housing. We advocate for changing our record sealing laws to allow better reintegration into society by expanding eligibility based on the circumstances surrounding individual offenses. Judges should have more discretion to decide whether a person is a good candidate for record sealing, regardless of their crimes, and the list of crimes eligible for record sealing should be expanded.

VI. Reform Community Control

Community control can often be a useful alternative to incarceration—allowing individuals to remain in their communities while lessening the burden on our overcrowded jails and prisons. Ohio should ensure that community control practices are not overly difficult to comply with and are also fair and uniform. To achieve this, we should aim for a statewide, standardized community control system, with consistent rules for all jurisdictions that consolidate reporting requirements for individuals who must report for community control in multiple jurisdictions. Additionally, we should limit which probation and parole violations result in incarceration, and increase transparency and fairness in the parole process.[54] These reforms will decrease the strain on our prison system while promoting efficiency and fairness.

Address the Problems with Ohio's Community Control System

"Community control" includes a variety of supervised release systems, which are often imposed prior to trial through a diversion program, instead of incarceration, or as a form of early release.[55] A common form of community control is probation, but it can also include up to six months in a treatment facility or halfway house, or other conditions like electronic monitoring or submitting to drug tests.[56] In some cases, judges may be able to impose community control instead of incarceration, such as for those convicted of first-time, non-violent and low-level felony offenses, but not in others, including higher-level felonies with mandatory prison terms.[57] While community control is ideally used to lessen reliance on incarceration, 35 percent of all state prison admissions are related to minor community control violations.[58]

Ohio's community control system is flawed in two ways:

1. There is no statewide uniform system or set of rules for community control; and
2. State law excessively allows incarceration as punishment for violating community control.

These flaws directly contradict a primary benefit of using community control—keeping people out of prisons and jails—by increasing the likelihood of recidivism. We propose the following two recommendations to fix our broken community control system.

Recommendation 1 – Implement a Unified, Statewide Community Control System

Many states have unified, statewide community control systems.[59] This uniformity helps individuals who are on community control, especially in multiple jurisdictions, by streamlining the rules and reporting requirements.[60] For example, if someone is serving probation for two different offenses in two different jurisdictions, that person should not have to abide by two completely separate and sometimes very different sets of rules.

Ohio does not have a unified state system for community control. Instead, Ohio has county probation offices, with some state-level oversight.[61] This has led to a proliferation of probation offices— over 180 statewide, making Ohio the state with the most probation offices.[62] Generally, common pleas courts supervise probation offices, working with the Adult Parole Authority and the ODRC, which takes a stronger role in more rural areas. Similarly, for juveniles, each county works with the sentencing juvenile judge and a county-level probation officer. The community control rules and authority vary widely county by county. For example, probation officers in different counties have a different enforcement authority, including whether they carry firearms.[63] This makes it harder for people to comply with the terms of their community control because it is difficult to learn and comply with such inconsistent systems. We strongly recommend that Ohio implements a state-controlled probation office with uniform rules.

Recommendation 2 – Reduce the Use of Incarceration for Community Control Violations

Ohio law includes sentencing guidelines for determining community control, and it includes a five year maximum sentence for community control. However, judges still have significant discretion in sentencing.[64] For example, *any* violation, even a technical one, except failure to pay a fine if the person is indigent, can be grounds for revoking community control and imposing incarceration.[65] Additionally, community control violations have a lower standard of proof than criminal convictions—meaning it is easier to find someone guilty of the violation. This further expands the discretion individual judges and probation officers have to revoke community control in favor of harsher punishment.[66] Ohio should reform the laws related to community control violations by removing broad judicial discretion, eliminating technical and minor violations as reasons for revoking community control, and using a warning system prior to revocation.

Address the Problems with Ohio's Parole Processes

> "The fact of a crime never changes, but the person who commits it can, and often does. This is the basic principle of parole—that while people must be punished for their wrongdoing, most are capable of growing, changing and rejoining society before the end of their sentence."
> —*New York Times* editorial, Feb. 16, 2014[67]

The Ohio Parole Board has broad discretion in deciding whether to release parole-eligible prisoners. The Board may feel pressure to act when community members, especially victims, ask them to extend a prisoner's punishment. At the same time, parole boards exist because we see value in giving second chances and do not want those who have been rehabilitated to languish in prison. It is crucial that

we enable people to reenter society as productive and law-abiding citizens to improve public safety, promote healing and rehabilitation for both victim and prisoner, and practice forgiveness.

Each year, over one thousand Ohio prisoners are considered for parole.[68] As a result, the Board has an important role in determining the size and composition of the prison population. Parole release decisions impact the allocation of scarce state funds. Supervising a parolee costs about one-tenth the cost to keep that person in prison, and prison healthcare costs rise as prisoners get older.[69] [70] In recent years the Board has released only a miniscule percentage of the parole-eligible population. The reasons for these decisions are often unclear and provide no guidance about how prisoners can increase their chances of being paroled.

To reform Ohio's inefficient and unjust parole system, we propose the following three recommendations: (1) create more transparency in parole decisions; (2) put less weight on the seriousness of the offense, and (3) reverse declining release rates.

Recommendation 1 – Create More Transparency in the Parole Process

The Board has broad discretion in determining parole and needs to become far more transparent in how it makes its decisions.[71] This includes providing information about the evidence considered and the specific justification for each parole decision. Aside from being good policy, increasing transparency in parole processes will likely also increase a parole candidate's chances of successfully petitioning for parole in the future.

i. Eligibility

Chapter 2967 of the Ohio Revised Code broadly lays out parole eligibility requirements, stating that the Board may allow early release if there is reason to believe it is in the interest of justice.[72] The only other statute governing the Board's decision-making process was created by House Bill 86. This law requires all criminal justice agencies to use a "single validated risk assessment tool."[73] As a result, Ohio developed the Ohio Risk Assessment System (ORAS).[74]

Additionally, ODRC regulations list 18 factors the Board "shall" consider when determining parole. Factors include the person's prison reports and criminal record; presentence or post-sentence reports; medical reports; a statement from the prisoner; evidence of the prisoner's post-release plans and community support; the prisoner's work and educational history; and a catch-all category for "[a]ny other factors which the board determines to be relevant."[75] However, the Board does not need to expressly address any of the factors when determining parole.[76]

ii. Parole Decisions

Every parole candidate receives a written parole decision. However, by many accounts, the decision letters regularly do not expressly address any of the 18 factors or otherwise meaningfully expand on the reasons for the decision. Each decision letter must cite one or more reasons for denial listed in Ohio Administrative Code § 5120:1-1-07(A). Commonly, box "B" is the only item checked. Box "B" corresponds to § 5120:1-1-07(A)(2), which reads:[77]

> There is substantial reason to believe that due to the *serious nature of the crime*, the release of the inmate into society would create undue risk to public safety, or that due to the *serious nature of the crime*, the release of the inmate would not further the interest of justice nor be consistent with the welfare and security of society. [Emphasis added.]

Generally, the Board also writes a few sentences related to its decision but simply repeats the language of box "B."[78] Instead, the Board should produce detailed written explanations for its decisions—clearly

explaining what factors influenced their decision so the candidate knows how they can improve future chances for parole.

Additionally, Board decisions can be based on statements by victims or other individuals that the candidate has no opportunity to dispute or explain, or they can simply be based on the seriousness of the offense. Unfortunately, many parole candidates who are denied parole never truly know why, due to the lack of transparency and explanation during the parole process. All candidates for parole should have the opportunity to learn what evidence the Board considered so they can challenge it.

Recommendation 2 – Stop Relying on the "Seriousness of the Offense"

The "seriousness of the offense" should not ever be the sole factor that results in a parole denial. Research has repeatedly found that parolees who committed what most people would consider the most serious offenses—murder, kidnapping, sex crimes—are the least likely to reoffend. For example, a 2002 Bureau of Justice Statistics study covering fifteen states, including Ohio, found that the parolees least likely to offend were those originally convicted of homicide or rape.[79] In New York, from 1985 to 2009, just 2.2 percent of parolees who were originally convicted of murder returned to prison for a new conviction, the lowest recommitment rate of any offense.[80]

Additionally, our criminal justice system already takes into account the seriousness of the offense. The legislature, the jury, and the judge, all assign punishments related to the seriousness of the offense. By the time a person is sentenced for a crime, that person's fellow citizens have already expressed their beliefs about the seriousness of the crime through their participation in the legislature and the courts. They have expressed their belief that X years of imprisonment is sufficient punishment for X crime, and that if that person proves they have been rehabilitated after X years, they should be released.

When the Board—an appointed body with no meaningful oversight—considers the "seriousness of the offense" and denies parole to someone who has provided evidence that they have changed, it is simply resentencing the person. Instead, the Board should conduct a holistic review, including the person's steps toward rehabilitation.

Recommendation 3 – Reverse Declining Parole Release Rates and Mandate Presumptive Release

Ohio should intervene to stop the sharp decline in parole releases. In 2004, more than 50 percent of inmates eligible for parole were released. By 2014, only 4.8 percent were released.

This extreme shift is partially explained by changes in Ohio's sentencing framework. In 1996, Ohio enacted Senate Bill 2 (SB2), which largely replaced indeterminate sentencing (e.g., a sentence of 6 to 12 years with parole eligibility after 6 and mandatory release at 12) with determinate sentencing (e.g., a sentence of 8 years, period).

In 2004, more than 50 percent of inmates eligible for parole were released. By 2014, only 4.8 percent were released.

Table 1. Ohio parole release rates[81]			
Calendar Year	Total Hearings	Total Releases	Release Rate
2004	13,900	7,039	50.6%
2005	11,658	5,540	34.9%
2006	11,405	5,502	34.6%
2007	6,888	3,272	35.9%
2008	4,656	1,670	39.2%
2009	3,028	700	25.1%
2010	2,121	423	20.1%
2011	1,918	133	6.9%
2012	1,486	226	15.3%
2013	1,479	62	4.2%
2014	1,284	62	4.8%

However, the Board continues to hold hearings for people given indeterminate sentences before S.B. 2 passed. Additionally, indeterminate sentencing is still used for several offenses including aggravated murder, murder, human trafficking, and certain sex/sexually-motivated offenses.[82]

Officials argue that parole release rates have plummeted because the parole-eligible population (about 7,000 prisoners) has increasingly consisted of people convicted of murder or other violent crimes and sex offenses. There is no question that SB2 changed the makeup of Ohio's parole-eligible population, but this rationale is unfounded.

Table 2. Profile of parole-eligible inmates as of summer 2014[83]		
Sentence	Number	Percentage of DRC's total population (50,378)
Pre-SB2 ("old law inmates")		
Life	1,571	3.1%
F1	1,391	2.8%
F2	69	< .01%
F3 and F4	3	< .01%
Indefinite sentence, have had first parole hearing (denied) — TOTAL	*3,034*	*6.0%*
Life	742	1.5%
F1	120	.02%
F2	16	< .01%
F3 and F4	0	—
Indefinite sentence, have had no parole hearing — TOTAL	*878*	*1.7%*
Old law indefinite sentence — TOTAL	**3,912**	**7.8%**
Post-SB2 ("new law inmates")		
Post-SB2 but pre-HB-86 indefinite sentence	3,480	6.9%
Post-HB-86 indefinite sentence	167	0.3%
Approximate number of new law inmates either on death row or LWOP (DRC counts these as indefinite sentences even though they'll never get parole)	– 560	1.1%
New law indefinite sentence — TOTAL	**3,087**	**6.1%**
TOTAL indefinite sentence — i.e., total number of DRC inmates who are either eligible for parole or will be at some point	***6,999***	***13.9%***

In 2005, a spokesperson for ODRC explained that hundreds of inmates had been denied parole because they were the "worst of the worst." However, Ohio's courts ruled that 174 prisoners had been unlawfully denied "meaningful consideration," and the Board released 14—apparently with no catastrophe.[84] [85] Additionally, SB2 did not completely remove indefinite life sentences. About 45 percent of prisoners with "X-to-life" sentences were sentenced after the implementation of SB2, so the pre-SB2 "worst of the worst" population should be making up an ever-smaller proportion of the parole candidates the Board sees.

To help reverse the declining parole rate, Ohio should revise the law to allow for automatic release when a prisoner's minimum sentence expires, except when their behavior has demonstrated a risk to public safety. If the Board wants to keep a person in prison longer than the minimum sentence, it should have compelling evidence to demonstrate that the person would pose a threat to public safety. The presumption for release should increase with each parole hearing, requiring a detailed explanation of the reasons for keeping the candidate in prison.

Locking people up indefinitely with no reasonable expectation of release is not Ohio's only option. Other states have reformed their parole processes to both release more inmates and to ensure public safety by reducing recidivism.

Michigan's Multi-Factored Approach to Parole

For years, Michigan locked up a disproportionate number of people for its population, and the parole board directly contributed to the problem. In fact, at one point, it released just 0.2 percent of those serving parole-eligible life sentences. As a result, in 2002–2003, Michigan ranked fourth among all states in the number of people with life sentences it imprisoned.

Around this time, the Department of Corrections launched the Michigan Prisoner Reentry Initiative (MPRI), primarily to increase parole rates. Major elements of the MPRI included,

(1) Expanding resources available for released inmates;
(2) Better preparing prisoners for parole hearings;
(3) Immersing the Parole Board in academic and statistical research; and
(4) Focusing resources on parolees with mental illness.

MPRI has been a remarkable success: 3,000 more prisoners were paroled in 2009 than in 2006, and parole increased for those convicted of violent offenses from 35 to 55 percent and for those convicted of sex offenses from 10 to 50 percent.[86]

Since launching the MPRI in 2003, recidivism dropped 27 percent, violent crime continues to decline, Michigan's prison population decreased by 8,434 prisoners, and the state shut down twenty-one correctional facilities.[87]

Conclusion

Ohio is in a mass incarceration crisis, but we can make positive changes to our criminal justice system. The Criminal Justice Recodification Committee has a profound opportunity to change Ohio's criminal code. Our legislators must incorporate the substantive reforms presented by the Committee and also address underlying policies that fuel mass incarceration. Our report provides a comprehensive plan to achieve lasting criminal justice reform in Ohio. It is our sincere hope that these recommendations will help Ohio reexamine our mass incarceration system and replace laws and policies that feed the cycle of incarceration.

End Notes & Citations

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68. See Table 1.
69. The Impact of Parole in New Jersey, The Pew Charitable Trusts, Nov. 2013, available at http://www.pewtrusts.org/~/media/legacy/uploadedfiles/pcs_assets/2013/PSPPNJParoleBriefpdf.pdf.
70. See Managing Prison Healthcare Spending, Pew Charitable Trusts, Oct. 2013, available at http://www.pewtrusts.org/~/media/legacy/uploadedfiles/pcs_assets/2014/PCTCorrectionsHealthcareBrief050814pdf.pdf.
71. The term "parole" covers at least three different stages of a prisoner's release: a parole board must first decide who to release (parole release decision-making), then a state or local agency must supervise the parolee (parole supervision). Meanwhile, the parole board retains the authority to revoke parole if the parolee slips up (parole revocation). This paper's principal purpose is to discuss parole release decision-making.
72. Ohio Rev. Code § 2967.03. [Stating in part, "The authority may . . . grant a parole to any prisoner for whom parole is authorized, if in its judgment there is reasonable ground to believe that . . . paroling the prisoner would further the interests of justice and be consistent with the welfare and security of society."]
73. Ohio Rev. Code § 5120.114.
74. Ohio Risk Assessment System, more information at http://www.drc.ohio.gov/web/oras.htm
75. Ohio Admin. Code § 5120:1-1-07(B).
76. Ohio Admin. Code § 5120:1-1-07(C).
77. Research conducted by the Ohio Justice and Policy Center, June 2014.
78. Id.
79. Patrick A. Langan & David J. Levin, Recidivism of Prisoners Released in 1994, Bureau of Justice Statistics, Jun. 2002, available at http://www.bjs.gov/content/pub/pdf/rpr94.pdf.
80. 2009 Inmates Releases, State of New York Department of Corrections and Community Supervision, Apr. 2013, available at http://www.doccs.ny.gov/Research/Reports/2013/2009_releases_3yr_out.pdf.
81. Note, data on Table 1 does not take transitional control into account.
82. See David J. Diroll, "Felony Sentencing 6-Page Quick Reference Guide," Ohio Criminal Sentencing Commission, effective Sep. 30, 2011, available at https://www.supremecourt.ohio.gov/Boards/Sentencing/resources/summaries/felonyQuickRef.pdf.

83. Data provided by ODRC officials via email.
84. See Ankrom v. Hageman, 10th Dist. Franklin No. 04AP–984, 2005-Ohio-1546 (2005).
85. Barbara Carmen, Columbus Dispatch, "Ankrom ruling opens old hurts" (Aug. 1, 2005) available at http://www.findmissingkids.com/Media/Stories/Ankromrulingopens.htm.
86. Luke Mogelson, Washington Monthly, "Prison Break: How Michigan managed to empty its penitentiaries while lowering its crime rate" (Dec. 2010) available at http://www.washingtonmonthly.com/features/2010/1011.mogelson.html.
87. Elizabeth Dwoskin, Business Week, "Michigan Lets Prisoners Go—and Saves a Bundle" (Dec. 1, 2011) available at http://www.businessweek.com/magazine/michigan-lets-prisoners-goand-saves-a-bundle-12012011.html.

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Looking Forward:

A Comprehensive Plan for Criminal Justice Reform in Ohio

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